

**Introduced by Senator Ducheny**

February 21, 2007

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An act to add a heading as Chapter 1 (commencing with Section 57000) to, to add a heading as Chapter 2 (commencing with Section 57018) to, to add Chapter 3 (commencing with Section 57030) to, Division 37 of, and to repeal Section 57012 of, the Health and Safety Code, relating to the environment.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 429, as introduced, Ducheny. Land use controls.

Existing law requires the California Environmental Protection Agency (Cal-EPA), the California Integrated Waste Management Board, the State Water Resources Control Board, each California regional water quality control board, and the Department of Toxic Substances Control to maintain a list of all instruments and agreements restricting land uses imposed by those agencies and would require the list to provide specified information.

This bill would require these state agencies, and specified local agencies, including a local officer supervising a remedial action to a release of waste, a local agency abating a hazardous substance from an underground storage tank, an administering agency supervising a site investigation or remedial action, or a local solid waste enforcement agency, to notify the building, planning, or engineering department in the affected city or county if it takes certain actions with regard to approving a remedial action, removal action, closure, corrective action, or any other type of environmental cleanup action, finds that the property subject to the action is not suitable for unrestricted use, and requires that the property be subject to a land use control, or if it enters into, or imposes, a specified instrument or agreement restricting land uses.

The bill would require that the applicable entity, within 30 days of a request of a city or county, review the land use activity proposed by the building permit, land use permit, or similar development permit and determine whether the proposed activity should proceed and, if so, whether certain precautions are required to be taken. The bill would authorize the planning, building, and engineering department of a city or county to refuse to issue a building, land use, or development related permit, unless the applicable entity reviews the permit application and approves the proposed activity, or proposes measures necessary to protect the public.

The bill would authorize the planning, building, and engineering department of a city or county to assess a property owner a reasonable fee, as determined by resolution of its governing body, to cover the costs of taking an action authorized by the bill.

The bill would require an owner of property encumbered with a land use control to comply with the restrictions imposed by that land use control, and would provide that the owner is not relieved of that responsibility if a state or a local agency grants a building, land use, or development related permit in error.

The bill would require an applicable entity that requires a land use control to indicate the conditions under which the limitations or restrictions of that land use control may be removed, and the process a person may take to remove the limitation or restriction removed from the record of title. The bill would allow an owner of property, or any person who believes he or she is the person adversely affected by that land use control, to appeal a decision not to remove the land use control to the Department of Toxic Substances Control so that the limitation or restriction may be removed from the record of title.

The bill would require Cal-EPA to publish, at least annually, a report that describes and evaluates these procedures and to complete a study concerning the use of land use controls.

The bill would provide that the state and any local agency are not liable for creating, maintaining, or operating a system of tracking environmental restrictions or holding a building, land use, or development related permit in suspense during the period for review by an applicable entity.

The bill would impose a state-mandated local program by imposing new duties upon local agencies that impose land use controls.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. The heading of Chapter 1 (commencing with Section 57000) is added to Division 37 of the Health and Safety Code, to read:

CHAPTER 1. CALIFORNIA ENVIRONMENTAL PROTECTION  
AGENCY

SEC. 2. Section 57012 of the Health and Safety Code is repealed.

~~57012. (a) Each agency listed in subdivision (d) shall maintain a list of all instruments and agreements restricting land uses imposed by that agency under Section 1471 of the Civil Code or any provision of law that is administered by that agency, in accordance with all of the following requirements:~~

~~(1) The list shall provide a description of location for each property that, at a minimum, provides the street address and the assessor's parcel number. If a street address or assessor's parcel number is not available, or if a street address or assessor's parcel number does not adequately describe the property affected by the instrument or agreement restricting land use, the list shall include a description of location or the location's geographic coordinates.~~

~~(2) The list shall provide a description of any restricted uses of the property, contaminants known to be present, and any remediation of the property, if known, that would be required to allow for its unrestricted use. The recorded instrument or agreement restricting land uses may be provided in lieu of the description required by this paragraph.~~

~~(3) Each agency shall update its list as new instruments and agreements restricting land uses are recorded and as instruments and agreements restricting land uses on properties are changed.~~

~~(b) Each agency listed in subdivision (d) shall display the list required under subdivision (a) on that agency's Web site, and shall make the list available to the public upon request.~~

~~(c) The California Environmental Protection Agency shall oversee the implementation of this section. In overseeing the implementation of this section, the California Environmental Protection Agency shall do all of the following:~~

~~(1) Maintain on its Web site hyperlinks to the individual lists posted pursuant to this section.~~

~~(2) Provide a search function that is able to search and retrieve information from each of the individual lists posted pursuant to this section.~~

~~(3) Create and post a list of all instruments and agreements restricting land uses that have been sent pursuant to subdivision (e) of Section 1471 of the Civil Code. The list created and posted pursuant to this paragraph shall meet all of the following requirements:~~

~~(A) The list shall identify the entity or jurisdiction that imposed the instrument or agreement restricting land uses.~~

~~(B) The list shall include the information required by paragraphs (1) and (2) of subdivision (a).~~

~~(C) The list shall be maintained for informational purposes only.~~

~~(D) The list shall contain a notation that information regarding the listed properties has been provided voluntarily, that the list is not all-inclusive, and that there may be additional sites where instruments or agreements restricting land uses have been imposed by other entities that have not been included on the list.~~

~~(d) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:~~

~~(1) The California Integrated Waste Management Board.~~

~~(2) The State Water Resources Control Board, and each California regional water quality control board.~~

~~(3) The Department of Toxic Substances Control.~~

SEC. 3. The heading of Chapter 2 (commencing with Section 57018) is added to Division 37 of the Health and Safety Code, to read:

CHAPTER 2. CHEMICAL TEST METHODS

SEC. 4. Chapter 3 (commencing with Section 57030) is added to Division 37 of the Health and Safety Code, to read:

CHAPTER 3. LAND USE RESTRICTIONS

57030. The Legislature finds and declares all of the following:

(a) Thousands of properties exist in the state where environmental cleanup will occur, is currently occurring, or has already occurred. Because of technical feasibility and economic limitations, many of these sites do or will retain some measurable soil or groundwater contamination when they are returned to productive use. Productive use of these properties is often a critical element to smart growth strategies, as it benefits communities in which they are located and the state as a whole.

(b) Cases have arisen in the state where local government agencies have granted building or development permits that allowed persons to be exposed to residual environmental contamination despite state agency restrictions designed to prohibit this exposure. To protect public health, safety, and the environment at residually contaminated sites, the existing system of institutional controls, including environmental restriction covenants, as well as land use limitations or conditions imposed within agency-issued site closure letters, no further action letters, remedial action certifications and other cleanup approvals, require a closer coordination among state environmental agencies and the political subdivisions that contain local building, planning, and engineering departments.

(c) City, county, and regional councils closely manage and control all land uses and related permits within their respective jurisdictions. This system of local controls protects the public, human health, and the environment from state or federal-defined hazard areas such as flood plains, and seismic zones. A similar system of local and state cooperation is required to protect human

1 health, safety, and the environment from inappropriate land uses  
2 within areas where environmental contamination remains.

3 (d) Such a system will increase the efficiency and safety of  
4 environmental cleanups and increase the pace and safety of  
5 property redevelopment and recycling.

6 57031. For purposes of this chapter, the following definitions  
7 shall apply:

8 (a) “Applicable state agency” means the California  
9 Environmental Protection Agency and all of the following entities  
10 within the agency:

11 (1) The California Integrated Waste Management Board.

12 (2) The State Water Resources Control Board, and each  
13 California regional water quality control board.

14 (3) The Department of Toxic Substances Control.

15 (b) “Applicable entity” means all of the following:

16 (1) An applicable state agency.

17 (2) A local officer supervising a remedial action to a release of  
18 waste pursuant to Section 101480.

19 (3) A local agency that abates or causes to be abated a release  
20 of hazardous substances from an underground storage tank in  
21 accordance with a local oversight program pursuant to Section  
22 25297.1.

23 (4) An administering agency supervising a site investigation or  
24 remedial action pursuant to Section 25264.

25 (5) A local enforcement agency certified pursuant to Section  
26 43202 of the Public Resources Code.

27 (c) “Cal-EPA” means the California Environmental Protection  
28 Agency.

29 (d) “Land use control” means a limitation on land use or other  
30 institutional controls for the protection of public health, safety, or  
31 the environment, including, but not limited to, an instrument or  
32 agreement restricting land uses imposed under Section 1471 of  
33 the Civil Code.

34 57032. (a) Each applicable state agency shall maintain a list  
35 of all instruments and agreements restricting land uses imposed  
36 by that agency under Section 1471 of the Civil Code or any  
37 provision of law that is administered by that agency, in accordance  
38 with all of the following requirements:

39 (1) The list shall provide a description of location for each  
40 property that, at a minimum, provides the street address and the

1 assessor's parcel number. If a street address or assessor's parcel  
2 number is not available, or if a street address or assessor's parcel  
3 number does not adequately describe the property affected by the  
4 instrument or agreement restricting land use, the list shall include  
5 a description of location or the location's geographic coordinates.

6 (2) The list shall provide a description of any restricted uses of  
7 the property, contaminants known to be present, and any  
8 remediation of the property, if known, that would be required to  
9 allow for its unrestricted use. The recorded instrument or agreement  
10 restricting land uses may be provided in lieu of the description  
11 required by this paragraph.

12 (3) Each applicable state agency shall update its list as new  
13 instruments and agreements restricting land uses are recorded and  
14 as instruments and agreements restricting land uses on properties  
15 are changed.

16 (b) Each applicable state agency shall display the list required  
17 under subdivision (a) on that agency's Internet Web site, and shall  
18 make the list available to the public upon request.

19 (c) Cal-EPA shall oversee the implementation of this section.  
20 In overseeing the implementation of this section, Cal-EPA shall  
21 do all of the following:

22 (1) Maintain on its Web site hyperlinks to the individual lists  
23 posted pursuant to this section.

24 (2) Provide a search function that is able to search and retrieve  
25 information from each of the individual lists posted pursuant to  
26 this section.

27 (3) Create and post a list of all instruments and agreements  
28 restricting land uses that have been sent pursuant to subdivision  
29 (e) of Section 1471 of the Civil Code. The list created and posted  
30 pursuant to this paragraph shall meet all of the following  
31 requirements:

32 (A) The list shall identify the entity or jurisdiction that imposed  
33 the instrument or agreement restricting land uses.

34 (B) The list shall include the information required by paragraphs  
35 (1) and (2) of subdivision (a).

36 (C) The list shall be maintained for informational purposes only.

37 (D) The list shall contain a notation that information regarding  
38 the listed properties has been provided voluntarily, that the list is  
39 not all-inclusive, and that there may be additional sites where

1 instruments or agreements restricting land uses have been imposed  
2 by other entities that have not been included on the list.

3 57033. (a) An applicable entity shall notify the building,  
4 planning, or engineering department in the affected city or county,  
5 if an applicable entity does either of the following:

6 (1) Takes any of the following actions, and upon finding that  
7 the property subject to the action is not suitable for unrestricted  
8 use, requires the property to be subject to a land use control:

9 (A) Approves a response action.

10 (B) Makes a determination of no further action.

11 (C) Issues a remedial action certification or a certificate of  
12 completion.

13 (D) Issues a closure letter.

14 (E) Approves a site closure.

15 (F) Otherwise approves a remedial action, removal action,  
16 closure, corrective action, or any other type of environmental  
17 cleanup action.

18 (2) Enters into, or imposes, an instrument or agreement  
19 restricting land uses pursuant to Section 1471 of the Civil Code.

20 (b) The notification required by subdivision (a) shall include  
21 all of the following:

22 (1) An identification of the assessor parcel numbers. If assessor  
23 parcel numbers do not exist for any property subject to subdivision  
24 (a), the notification shall provide sufficient means to describe the  
25 property affected, such as legal descriptions or latitude and  
26 longitude coordinates for the property boundaries.

27 (2) A summary of the land use controls imposed on those  
28 parcels.

29 (3) Include a notice explaining that the applicable entity will,  
30 upon request, review the activity proposed within any future  
31 building permit, land use permit, or similar permit application  
32 related to land activity and determine whether the proposed activity  
33 may proceed and, if so, whether certain precautions must be  
34 undertaken.

35 (c) An applicable entity agency may deliver the notification  
36 required by subdivision (a) through any effective means, including,  
37 but not limited to, by posting a notification on the Web site of the  
38 applicable entity in a manner easily searchable by other local  
39 jurisdictions.



1 (d) Within a reasonable time upon receiving a notification  
2 pursuant to subdivision (a), the planning, building, and engineering  
3 department of the city or county may identify and track the parcels  
4 of land identified by the notification.

5 (e) No later than 30 days after receiving a request from a city  
6 or county, the applicable entity that issued or otherwise approved  
7 a land use control for any property shall review the land use activity  
8 proposed by an application for a building permit, land use permit,  
9 or similar development permit. The applicable entity shall  
10 determine whether the proposed activity should proceed and, if  
11 so, whether certain precautions should be required to be taken.

12 (f) The planning, building, and engineering department of a city  
13 or county may refuse to issue a building permit, land use permit,  
14 or other development permit for a parcel for which the city or  
15 county receives a notification pursuant to subdivision (a), unless  
16 the applicable entity that issued or otherwise approved the use of  
17 land use control reviews the permit application and either approves  
18 the proposed activity or proposes measures necessary to protect  
19 the public with regard to the proposed permit, in which case, the  
20 city or county may make the permit conditional upon the discharge  
21 of the necessary mitigation measures that the applicable entity  
22 proposing the conditions may require.

23 (g) The planning, building, and engineering department of a  
24 city or county may assess a property owner a reasonable fee, as  
25 determined by resolution of its governing body, to cover the costs  
26 of taking an action pursuant to this section.

27 57034. An owner of property encumbered with a land use  
28 control shall comply with the restrictions imposed by that land use  
29 control, and shall not be relieved of that responsibility if the state  
30 or a local agency grants a building permit, land use permit, or other  
31 development permit in error. The state and a local agency shall  
32 not be liable for an error in granting such a permit.

33 57035. If an applicable entity requires property to be subject  
34 to a land use control, as provided in subdivision (a) of Section  
35 57033, the agency shall indicate the conditions under which the  
36 limitations or restrictions of that land use control may be removed,  
37 and the process a person may take to remove the limitation or  
38 restriction from the record of title. An owner of property, subject  
39 to a land use control, or any person who believes he or she is the  
40 person adversely affected by a land use control to restrict the use

1 of property, may appeal a decision by an applicable entity not to  
2 remove a land use control from the record of title to the Department  
3 of Toxic Substances Control, so that the limitation or restriction  
4 may be removed from the record of title.

5 57036. Cal-EPA shall oversee and ensure the proper  
6 implementation of Section 57033, including, but not limited to,  
7 doing both of the following:

8 (a) Publish, at least annually, a report that describes the  
9 procedures and tools employed to effectuate the procedures set  
10 forth in Section 57033 and the effectiveness of those procedures  
11 to prevent activities that conflict with environmental agency  
12 imposed land use restrictions, limitations, or other institutional  
13 controls.

14 (b) Complete a study concerning the use of land use controls  
15 issued pursuant to Section 1471 of the Civil Code as components  
16 of environmental response actions, which shall include all of the  
17 following:

18 (1) Evaluate whether, and to what extent, prior environmental  
19 response actions relied on future land use restrictions, limitations,  
20 or other institutional controls to protect public health, safety, or  
21 the environment.

22 (2) Evaluate whether and to what extent the environmental  
23 response actions subject to paragraph (1) utilized covenants issued  
24 pursuant to Section 1471 of the Civil Code, or other restrictions,  
25 limitations, or other institutional controls within, or as a condition  
26 to, a response action approval, a determination of no further action,  
27 a remedial action certification or a certificate of completion, a  
28 closure letter, or any other type of remedial action, removal action,  
29 closure, corrective action, or any other type of environmental  
30 cleanup.

31 (3) Evaluate when an environmental response action should  
32 require that a covenant be entered into pursuant to Section 1471  
33 of the Civil Code, in those cases where existing law does not  
34 require such a covenant.

35 (4) Recommendations for future actions, if any, and an estimate  
36 of the cost to implement the study's recommendations.

37 57037. The state and any local agency are not liable for any of  
38 the following:

39 (a) Creating, maintaining, or operating a system of tracking  
40 environmental restrictions authorized by this chapter.

1 (b) Holding a building, land use, or development related permit  
2 in suspense during the period for review by an applicable entity.

3 SEC. 5. If the Commission on State Mandates determines that  
4 this act contains costs mandated by the state, reimbursement to  
5 local agencies and school districts for those costs shall be made  
6 pursuant to Part 7 (commencing with Section 17500) of Division  
7 4 of Title 2 of the Government Code.

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